

Message

EXTRA INFO. 10/30/06

BoS
Mail

Page 1 of 2

10/27/06

NOTE TO BOS -

I HAVE REVIEWED THE TAPE. THE BOARD'S
CONDITION WAS THAT THEY WERE ALLOWED TO
SELL THE UNIT AT A TRULY "FAIR MARKET RATE"

John Murray

AND THEY WERE REQUIRED TO RETURN ANYTHING

From: Beddoe, Rich [rbeddoe@divinvest.com] ABOVE 75% OF THAT RATE TO
Sent: Friday, October 27, 2006 3:55 PM THE TOWN FOR USE FOR SENIOR
To: John Murray; Board of Selectmen PURPOSES .
Cc: Clerk Department; Pam Resor; KATHLEEN VORCE; acbeddoe@netway.com; b.shapiro@sympatico.ca
Subject: RE: Margaret C. Beddoe - 18 Brewster Lane

Mr. Murray,
Thanks for letting me know. The time change does not present a problem.

-----Original Message-----

From: John Murray [mailto:jmurray@acton-ma.gov]
Sent: Friday, October 27, 2006 3:45 PM
To: Beddoe, Rich; Board of Selectmen
Cc: Clerk Department; Pam Resor; KATHLEEN VORCE; acbeddoe@netway.com; b.shapiro@sympatico.ca
Subject: RE: Margaret C. Beddoe - 18 Brewster Lane

Mr. Beddoe,

Unfortunately, I had a misunderstanding the the Chairman of the Board and scheduled you for a time slot that was not available. In lieu of 8 PM, I would like to offer you to come to "Citizen Concerns" at 7:30 PM. Citizen Concerns is time for the Board to be quickly briefed on a subject matter. The Board does not usually take action on an item presented under Citizen Concerns at the time of presentation. In addition, your and Ms. Vorce's correspondence of this week will be provided to the Board of Selectmen prior to your arrival.

Again my apologies for the miscommunication.

John Murray

From: Beddoe, Rich [mailto:rbeddoe@divinvest.com]
Sent: Friday, October 27, 2006 1:28 PM
To: John Murray; Board of Selectmen
Cc: Clerk Department; Pam Resor; KATHLEEN VORCE; acbeddoe@netway.com; b.shapiro@sympatico.ca
Subject: RE: Margaret C. Beddoe - 18 Brewster Lane

Mr. Murray,
Thank you very much.

-----Original Message-----

From: John Murray [mailto:jmurray@acton-ma.gov]
Sent: Friday, October 27, 2006 1:17 PM
To: Beddoe, Rich; Board of Selectmen
Cc: Clerk Department; Pam Resor; KATHLEEN VORCE; acbeddoe@netway.com; b.shapiro@sympatico.ca
Subject: RE: Margaret C. Beddoe - 18 Brewster Lane

Mr. Beddoe,

Per your request, we have scheduled you to appear before the Board of Selectmen at 8:00 PM on Monday October 30, 2006.
In addition, I wanted to make you aware in compliance with state law (1) all correspondence to the Board of Selectmen and staff are public records and (2) your appointment before the Board of Selectmen is open to the public and will be televised.

10/27/2006

Thank you for your correspondence

John Murray

From: Beddoe, Rich [mailto:rbeddoe@divinvest.com]
Sent: Friday, October 27, 2006 12:38 PM
To: Board of Selectmen
Cc: Clerk Department; Pam Resor; KATHLEEN VORCE; acbeddoe@netway.com; b.shapiro@sympatico.ca
Subject: Margaret C. Beddoe - 18 Brewster Lane

Dear Board of Selectmen,
 I am attaching a letter to this email regarding my mother, Margaret C. Beddoe, who lives in Acton, MA. I am planning on attending your meeting on Monday night, October 30, 2006. I am hoping that you will read the attached letter, and set aside a few minutes on your agenda for Monday to discuss and help resolve the issue that she is having in selling her property at 18 Brewster Lane, a 'restricted unit' (moderate income) at Audubon Hill. This matter was previously addressed by your board on March 27, 2006, but the minutes of that meeting are not specific enough for my mother's real estate agent to begin to sell this property on a 'non-restricted' basis. Thank you for your attention to this matter.

Richard A. Beddoe
 POA for Margaret C.

Beddoe

CONFIDENTIALITY NOTICE

This transmission is intended for the sole use of the individual and/or entity to whom it is addressed, and may contain information and/or attachments that are privileged, confidential and exempt from disclosure under applicable law. If the reader of this transmission is not the intended recipient, you are hereby notified that any disclosure, dissemination, distribution, duplication or the taking of any action in reliance on the contents of this transmission by someone other than the intended addressee or its designated agent is strictly prohibited. If your receipt of this transmission is in error, please notify the sender by replying immediately to this transmission and destroying the transmission. For your protection, do not include Social Security numbers, passwords or other non-public and personal information in your email. Thank you

Board of Selectmen
Town of Acton
Acton, MA 01720

October 26, 2006

Dear Selectmen,

I am writing regarding my mother, Margaret C. Beddoe, who has resided in Acton for the past fifty two years. She has owned homes in Acton at 60 Hosmer St., 245 Main St. and most recently at 18 Brewster Lane. She now resides at the Robbins Brook Assisted Living facility in Acton. During her years in Acton she has been an active and positive member of the community involved in many activities including Girl Scouts, serving on the board of directors, her condominium association, again serving on it's board of directors, the Acton Congregational church, and delivering 'meals on wheels' after she retired. For the past year and a half, she has endeavored to sell her home at 18 Brewster Lane as a 'Restricted Unit' under the terms of the Audubon Hill South Condominium Master Deed. Under the terms of that master deed, Mrs. Beddoe purchased the property at "seventy five percent (75%) of the Fair Market Value of the price of the Non-Restricted Units" as stated in section 9.2.b of the Master Deed. Upon selling the unit however, she as the owner of a restricted unit is required to sell the property at seventy five percent of its appraised value as specified in section 9.3.b of the Master Deed as opposed to being able to recoup the equal 75% of the appraised value of the non-restricted units. I see this as the first of a number of flaws in the Master Deed and in this process. The inequity would not be so great if in fact the restricted and non-restricted units had been of equivalent value to begin with. However, they were not of equivalent value, as the builder was permitted by the town as evidenced in a letter dated June 27, 1991 written by the builder to the town manager, to strip down the restricted units by not including construction features and items in the restricted units which were a part of the non restricted units. These included a finished walk-out basement which added approximately seven hundred square feet of living space, air conditioning and a more finely finished deck. The buyers of these restricted units got less for less when they purchased the property and in fact got about what they paid for. At least one potential buyer, again as evidenced in the letter cited above, saw the inequity in this and elected not to purchase a restricted unit. I believe that the cutting back on inclusions in the restricted units occurred primarily due to the fact that the builder had encountered financial hardship during the construction of the condominium complex and was permitted reduce the number of restricted units from the initial sixteen to only four and to limit his building costs in general.

Since June 2005 we have endeavored quite diligently to sell 18 Brewster Lane as a restricted unit while adhering to all of the terms of the Master Deed. On two separate occasions, we believed that we had the home sold to qualified purchasers and proceeded to a purchase and sale agreement with one buyer and to a good offer from another. Both sales fell through due to problems that the buyer's encountered. During this period and on two separate occasions, we also had phone calls and other communication from parties

within the town and the Acton Housing Authority regarding the possible purchase of the property by the AHA. However, such a sale never came to fruition.

In March 2006, in the minutes of your board, it was approved that a restricted unit at Audubon Hill could be sold to a non-qualified buyer. We believe that unit to be 18 Brewster Lane, but we have no formal document stating that it is in fact the unit. We contracted with a realtor after interviewing three agencies and chose the realtor who best understood the situation and whose market analysis and proposal set the asking price at the highest value as compared to the other two realtors. The realtor however does not feel that she can begin to market the home until she receives a clear and written statement from the town releasing the sale from the restrictive clause. Our efforts at receiving such a statement from the town have been met with delay, obstruction and the demand that a specific sum of money be returned to the town upon the sale.

The Master Deed specified that the seller should endeavor to sell to a qualified 'moderate income' person for a period of 180 days. We have exceeded that number of days three times over. The Master deed also speaks of exhausting potential buyers from a 'list' that the town would have. The town has no such list, and has never attempted to assemble a list of 'moderate income' persons to my knowledge. Nor has any agent of the town ever referred any moderate income person to us.

At this point, my mother must be allowed to sell her house to whomever she can. She moved out of the property in December 2004. Her costs, including condo fees, taxes, utilities and repairs range from seven hundred and fifty dollars to one thousand dollars per month for 18 Brewster Lane. At the same time, she has been paying over four thousand dollars per month for her assisted living at Robbins Brook. This rent will increase by over two hundred dollars in January 2007. Her income is primarily from her teacher's pension and social security and she now needs the proceeds from the sale of her home to continue living at Robbins Brook. I respectfully request that you intercede in this matter so that my mother is able to sell her property as quickly as possible.

Sincerely,

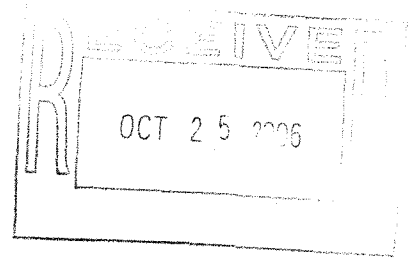
Richard A. Beddoe
For Margaret C. Beddoe

BOS

ANDERSON & KREIGER LLP

DANIEL C. HILL
dhill@andersonkreiger.com

October 24, 2006



BY FACSIMILE: 978-263-0554 and Mail

Kathleen A. Vorce, Esq.
P.O. Box 554
West Acton, MA 01720

Re: Resale of Affordable Condo Unit - 18 Brewster Lane, Acton MA.

Dear Kathleen:


In response to your email dated October 19, 2006, the minutes from the Board of Selectmen's March 27, 2006 meeting should be sufficient notice to any prospective purchasers that the Board of Selectmen intend to release your client's condominium unit from the deed restriction upon your client's acceptance of an offer from a prospective buyer. As you know, the Town is not obligated to provide a Certificate of Compliance until after your client has submitted an affidavit as required under Section 9.3(g)(iii) of the Master Deed recorded with the Middlesex South District Registry of Deeds in Book 20875, Page 79, as amended.

Please be further advised that the Board's vote on March 27, 2006 to declare its intention to release the unit from the restriction was conditioned upon the Town receiving at least \$90,000 from the proceeds of the sale, as compensation for the loss of the affordable unit, representing the approximate difference between the fair market value of the unit and the restricted value of the unit.

Once your client has accepted an offer, please forward me a new affidavit in accordance with Section 9.3(g)(iii) and I will see that your request for a Certificate of Compliance is expeditiously processed.

If you have any questions, please contact me.

Very truly yours,


Daniel C. Hill

DCH/ld

cc: John Murray

g:\docs\act\audubonhill\wvorce002.doc

York of the Engineering Dept was nominated for Municipal Employee of the year. DORE' HUNTER – Moved to award this years award to Cory York. WALTER FOSTER – second. UNANIMOUS VOTE

TOWN MEETING PREPARATION - The neighborhood from Spencer and Tuttle were present to ask that the Board stay the course. The Board will support this article.

Don will have all the submittals for the Selectmen ready for the board as well as for articles that are consent incase they are held.

Walter said that they will be announcing the Capital Planning Committee.

They will start at 6:15 in the faculty dining room at the High School.

AUDUBON HILL BREWSTER LANE - Sale of a unit at below market rate. John explained the issue of the developer and banks went broke. They were to provide affordable units. What we got was a reduced senior center and 4 units. This is the first unit of the four units to turn over, the condo fee is over \$300 and carrying cost would be \$2,700 per month. It is now not an affordable unit with the high condo fees. The problem is the limit of assets. A number of people have been disallowed because of assets.

DORE' HUNTER - Moved to approve the unit being sold at market rate and extra funds be submitted to the town for use of senior citizens. Peter asked about the potential use. The trust can be used for any use for senior citizens' use. WALTER FOSTER – second. UNANIMOUS VOTE.

OTHER BUSINESS

MAPC LETTER ABOUT WOODLANDS - Dore' will hand it to Mark Draisen at a meeting he is to attend. The Board approved the signing of the letter by the Chairman.

Dore' Hunter will be the new Veteran's Agent; he has already obtained his paperwork to begin his position.

Peter wanted to announce a meeting of the Freedom Heritage Landscapes on this Thursday at 7:30. It will give the people in town a voice on what they think about the various properties.

CONSENT AGENDA

DORE' HUNTER – Moved to Approve with a hold on 17 and 30 at Andy's request. – LAUREN ROSENZWEIG –second - UNANIMOUS VOTE.

Andy asked about the Board of Registrars capacity. ANDREW MAGEE – Moved to approve the Appointment of Mr. Seward. WALTER FOSTER – second. UNANIMOUS VOTE

Andy wanted to know if we had funded the Replacement of the light poles for Elm Street this year. We had, but these donations would add to the strength of approval at Town Meeting. ANDREW MAGEE – Moved to approve. WALTER FOSTER – second. UNANIMOUS VOTE.

Oct. 26 06 04:27p

Owner

978 263 0554

p. 2

KATHLEEN A. VORCE

Attorney At Law

Telephone: (978) 264-0554 - Fax 263-0554

Mail: P.O. Box 554, West Acton, MA 01720

October 26, 2006
By Fax to 617-252-6899
and First Class Mail

Daniel Hill, Esquire
Anderson & Kreiger LLP
43 Thorndike Street
Cambridge, MA 02141

Re: 18 Brewster Lane, Audubon Hill, Acton, MA

Dear Attorney Hill,

I am in receipt of your October 24, 2006 letter responding to my October 19th inquiry prompted by John Murray's suggestion that there be an "agreement" clarifying the terms upon which the newly engaged real estate broker shall list the restricted unit for sale.

While you and I may agree that the sense of the minutes of the March 27, 2006 Selectmen's meeting is clear, it is because we both possess the background knowledge to confirm the identity of the unit being discussed. The minutes otherwise refer obliquely to Audubon Hill and not specifically to 18 Brewster Lane. Request for clarification on the record is requested, that Mrs. Beddoe's unit may be advertised and sold free of restrictions.

As to the balance of your letter wherein you state the "release [of] the unit from the restriction was conditioned upon the Town receiving at least \$90,000 from the proceeds of the sale", I could not disagree more strongly. First, nowhere is that referenced in the Minutes of that vote of the Selectmen. Second, and more important, nowhere in the Comprehensive Development Agreement or the Master Deed is there any such provision. To the contrary, the section of the Master Deed preceding the one referenced in your letter states "In the event a Restricted Unit is sold as described in Paragraph 9.3(g)(I) hereof [viz. released from restrictions], the sum equal to the excess of the amount received by the Seller of the Unit over the Unit's Maximum Resale Price shall be paid to the Town to be held by the Town in trust for the benefit of the Town's Senior Citizens." Nowhere is there an entitlement by the Town to condition anything on its recovery of money. Rather there is an entitlement in the Seller to retain the Maximum Resale Price, which is 75% of the appraised value (section 9.3(a) of the Master Deed).

You and I might agree that it is reasonable for the Town to offer "interpretations" where the Master Deed or Comprehensive Development Agreement has "holes," as you put it. The only hole there possibly exists here is that the parties have not assured the Selectmen that the broker

Office: 555 Liberty Square Road, Boxborough

Oct 26 06 04:27p

Owner

978 263 0554

p. 3

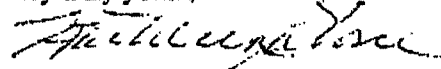
will attempt to secure the "best possible price for the property under the prevailing market conditions." The Beddoes have authorized me to make this commitment on their behalf, so we can move forward. And I must point out that it is impossible to adhere to the wording of the recorded documents where there is a guaranteed base to the Seller, while providing a guaranteed windfall to the Town off the top without the entire arrangement breaking down.

Because I do not wish to serially address issues as we have over the past dozen and a half months, I brought to your attention one final issue that I see looming, and that is the issue of who bears the cost of the broker's commission. On that point I called to your attention wording in the Comprehensive Development Agreement that enlarges on the parallel wording in the Master Deed. In the Development Agreement it says in Article III, 3.4(h)(i) [Lack of Eligible Purchaser] "In the event that the owner of a Restricted Unit places a Restricted Unit for resale on the open market by so notifying the Town Designee and, *at such owner's option*, by listing such Unit with a real estate brokerage company" after attempting to sell for 180 days without success the unit shall be forever released from restriction. Continuing immediately thereafter in Article III, 3.4(h)(ii) it is provided "In the event a Restricted Unit is sold as described in Section 3.4(h)(i), the sum equal to the excess of the amount received by the Seller of the Unit over the Unit's *Maximum Resale Price* shall be paid to the Town to be held in trust for the benefit of the Town's Senior Citizens as provided in Section 3.4.(b) hereof. [A section the Town has not implemented, having failed as yet to establish a fund for Senior Citizens.] Reading these two sections consistently, I argue that the "option" to use a broker is mentioned to suggest that *the consequences to the owner shall be the same, whether a broker is used or not* — the brokerage commission will come out of the "excess." I would like us to agree on this.

I understood this Development Agreement to be assisting in sponsoring "moderate income" citizens of the Town of Acton to be able to continue to live in Acton, and to recoup moderate profits when they passed on the unit to, as was hoped, other moderate income persons. Mrs. Beddoe has appreciated her opportunity to benefit by this, and has been the one insisting that her sons continue to endeavor to find another appropriate eligible purchaser. This has been fruitless for a number of reasons. In responding to the \$90,000 challenge and in attempting to resolve the brokerage commission issue I have told you, Attorney Hill, that I hoped we were not finding ourselves embroiled in a situation where the Selectmen felt they had competing profit motives with Mrs. Beddoe. In my view, failing to find another eligible purchaser, whatever excess the Selectmen recover is more than they have had to date to assist Senior Citizens.

As I said, and as Richard Beddoe has often repeated to me: we are looking for a solution and not more arguments. In the spirit of the Development Agreement I have to ask that the solution be one that is equitable and because the Agreement is a contract of adhesion, I have to insist that it be construed in the light most favorable to Mrs. Beddoe. Please convey the entirety of my position to the Selectmen and counsel them as to what is fair under the circumstances. Thank you.

Very truly yours,



KATHLEEN A. VORCE